



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators BRACKETT, Johnson, Bock and,
Representatives PALMER, Shepherd, Ringo

FROM: Katharine Gerrity - Principal Legislative Research Analyst

DATE: September 24, 2014

SUBJECT: Temporary Rule

IDAPA 39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business - Temporary Rule -
Docket No. 39-0203-1401

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.03 - RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS

DOCKET NO. 39-0203-1401

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 21, 2014.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 49-201(1), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This rule adds specific information regarding the Idaho Consumer Asset Recovery Fund (ICAR) passed in House Bill 167, in the 2013 legislative session, to identify how the ICAR fee will be set and by whom. It further specifies when a fee change will go into effect. Changes provide that all dealers, unless otherwise exempt will pay into the fund. The sections for liability insurance and surety bond requirements have just been moved to another heading under the rule to be more logical and specify that a surety bond is needed for the first 3 years unless otherwise provided by code, as also contained in House Bill 167.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule provides further administrative directive for House Bill 167 from the 2013 Legislative Session.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There are no fees being imposed or increased by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Amy Smith, Motor Vehicle Manager, (208) 334-8660.

DATED this 22nd Day of August 2014.

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 39-0203-1401
(Only those Sections being amended are shown.)**

010. DEFINITIONS.

01. Vehicle Dealer File System. Books, records and files, necessary to conduct the business of a vehicle dealership. In accordance with the Vehicle Dealer Act, records shall be securely kept by the dealership in such

order that they can be readily inspected by a Department Investigator. Such records and files may be kept electronically, as long as such records can be verified by the dealership as true and correct copies of the original records. Physical records or files retained by the dealership may be stored at an off-site location. The dealership must notify the department 30 days in advance of the address of the off-site location prior to moving such records. Records or files stored off-site must be made available to the department within 3 business days upon request. The files and records shall contain but are not limited to: (3-29-12)

- a. Physical or electronic sales invoices for current and two (2) preceding years; (3-29-12)
- b. Physical or electronic copies of purchase orders for vehicles purchased for current and two (2) preceding years; (3-29-12)
- c. Physical or electronic copies of title application forms accessible in numerical order; (3-29-12)
- d. Written or electronic records of vehicles bearing new or used dealers' number plates and their use by a manufacturer, vehicle dealer, or full-time licensed salespersons searchable by date, time or plate number; (3-29-12)
- e. Written or electronic records for loaner plates searchable by date, time or plate number; (3-29-12)
- ~~f. A valid bond in the amount required by Section 49-1608, Idaho Code; (12-26-90)~~
- ~~g.~~ Copies or electronic records of Wholesale Dealer Forms records showing, all transactions, as applicable searchable by date or name of consignee; (3-29-12)
- ~~h.~~ Physical or electronic odometer disclosure records for non-exempt vehicles; and (3-29-12)
- ~~i.~~ Physical or electronic records of consignment agreements, as specified in Section 49-1636, Idaho Code. (3-29-12)
- ~~j. A valid liability insurance policy as required by Section 49-1608A, Idaho Code. (3-29-12)~~
- ~~k.~~ All electronic records must be created in a secure manner to prevent such records from being altered. Electronic copies of records must be legible, complete, and an accurate reproduction of the original business record. (3-29-12)
- ~~l.~~ All electronic copies of records shall be supplemented with a back-up copy of the electronic records, either retained on-site or an off-site location, which permits the business record to be retrieved within three (3) business days. (3-29-12)
- ~~m.~~ Any device, server, network device, or any internal or external storage medium which stores the electronic records must have security access controls and physical security measures to protect the records from unauthorized access, viewing, or alteration. (3-29-12)
- ~~n.~~ Any dealer storing electronic or physical records that contain personal information shall ensure that disposal of any records shall be completed in a secure manner, by shredding, erasing, or otherwise modifying the personal information to make it unreadable or undecipherable through any means. (3-29-12)

02. Vehicle Dealer Sign Requirements. An exterior sign permanently affixed to the land or building, with clearly visible letters, visible to major avenue of traffic meeting local building or zoning codes with the trade name of the dealership clearly visible is required. Wholesale dealer signs may be painted on the window of the office next to the entrance door of sufficient size to be easily read by prospective customers. A suggested retail sign size is twenty-four (24) square feet, with a minimum of four (4) inch letters. (3-29-12)

03. Telephone. A business phone which has a published business number, and listing in a local telephone directory in the name of the dealership. Business phones shall be answered during declared business hours, in the name of the licensed dealer. The telephone may be answered in person, by an answering machine, or at a remote location in person. (3-29-12)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. Physical or Electronic Records System Inspection. A vehicle dealer shall make available all books, records and files maintained at the dealership location for immediate inspection for cause or complaint, or within three (3) business days if records are stored at an approved off-site location for random compliance review by a peace officer or authorized agent of the Department. (3-29-12)

02. Title Fee Disclosure. A dealer may reflect the payment of a state-required title fee as specified by Section 49-202(2)(b), Idaho Code, however: (7-2-92)

a. The fee must be clearly identified as a "TITLE FEE"; (7-2-92)

b. The fee must be shown as the exact amount required by law; (7-2-92)

c. Any documentation fees charged must be clearly listed separately from other fees and identified to the customer as dealer document preparation fees that are subject to sales tax as part of the purchase price of the vehicle. (7-2-92)

03. Surety Bond. A valid bond in the amount required by Section 49-1608D, Idaho Code, for three (3) years after initially licensed, unless otherwise provided by code; (8-21-14)T

04. Idaho Consumer Asset Recovery (ICAR) Fund. (8-21-14)T

a. All licensed dealers shall pay the annual fee as set by the Idaho Consumer Asset Recovery (ICAR) Board as required by Section 49-1608C, Idaho Code, unless otherwise provided by code. (8-21-14)T

b. The ICAR fund fee shall be set by the ICAR Board annually to be effective the following January 1. Such fee shall be posted on the Department web site and all applicable forms for dealer licensing. (8-21-14)T

05. Liability Insurance. A valid liability insurance policy as required by Section 49-1608A, Idaho Code. (8-21-14)T

036. Vehicle Dealer License Suspension. Any dealer not meeting the requirements of the Vehicle Dealer Act shall be subject to suspension of an existing dealer license or refusal by the Department to issue a new dealer license. (7-2-92)

a. The Department's agent shall give written notice of deficiencies to the dealer or applicant. (12-26-90)

b. At its discretion the Department may give the licensed dealership a reasonable amount of time to comply. (12-26-90)

c. Upon compliance, the license shall be reinstated or issued. (12-26-90)